

FILED

JUN 12 2007

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**SHAWN SELSKY,**

Plaintiff,

v.

**IMS HEALTH INCORPORATED,**

Defendant,

C. A. No. A07CA 463SS

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

**SHAWN SELSKY**, Plaintiff, complains of **IMS HEALTH INCORPORATED**, Defendant, and for cause of action against them and would show the Court as follows:

1. INTRODUCTION

1.1. This action seeks equitable relief, compensatory, attorneys' fees, expert witness fees, taxable court costs, pre-judgment and post-judgment interest. Plaintiff Shawn Selsky ("Plaintiff" or "Selsky") claims that IMS Health Incorporated ("IMS" or "Defendant") retaliated against her in denying her benefits under its ERISA plan.

2. PARTIES

2.1. Plaintiff **SHAWN SELSKY** is a resident of Austin, Travis County, Texas. At all pertinent times she was a resident of Austin, Travis County, Texas.

2.2. Defendant, **IMS HEALTH INCORPORATED**, is a foreign corporation. **IMS HEALTH INCORPORATED** and its attorney Diana L. Hoover, Mayer, Brown, Rowe & Maw, LLP, 700 Louisiana, Ste. 3400, Houston, Texas 77002 have agreed to accept service.

### 3. VENUE

- 3.1. Venue is appropriate in the United States District Court for the Western District of Texas, in that the corporate defendant had significant contacts within this district, the Plaintiff resided within this district at the time of her claims, and the events that gave rise to this cause of action occurred in this district.

### 4. JURISDICTION

- 4.1. This Court has jurisdiction of this action pursuant to Section 510 of ERISA. Section 510 may be enforced by an action under section 502(a)(3), to protect employees from actions designed to prevent the vesting of pension rights. Section 502(a)(3) authorizes an individual to institute a civil action "(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3).

### 5. FACTS

- 5.1. Ms. Selsky was a 14-year employee of IMS.
- 5.2. In December 2005, Ms. Selsky transferred from the Plymouth Meeting, Pennsylvania office to Austin, Texas. Thereafter, she continued working for IMS out of her home office in Austin, Texas.
- 5.3. In October 2006, she was notified by the Chief Information Officer, Irving Tyler, that her employment with IMS would end on December 31, 2006, and that she needed to resign.<sup>1</sup>

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<sup>1</sup> Of note, Ms. Selsky's Performance Management Plan for 2005 states "[i]n 2006-2007, Shawn's primary career development will be to make continuous process improvements to the IS Project Management Office and institute as a critical tool to prioritize IS projects and align resources to meet the business objectives." Simply, Ms. Selsky's transfer to Austin was not temporary, and IMS considered Ms. Selsky a long-term opportunity.

In addition, Mr. Tyler told Ms. Selsky that she was not being terminated and her position was not being eliminated. Instead, she was informed that a new requirement of her position was that she work out of IMS' Pennsylvania office.

- 5.4. In response, Ms. Selsky sought assistance from Kathleen Shelmerdine with the Human Resources Department and was informed that she should seek opportunities where the business need could accommodate her decision to relocate to Austin.
- 5.5. Despite IMS' attempt to recast the chain events, Ms. Selsky asked about any open positions and was informed that there were no open positions for her in Austin.
- 5.6. The requirement that Ms. Selsky work out of IMS' Pennsylvania office was not a realistic option as she had settled with her family in Austin for almost a year. Moreover, her three children were enrolled in schools, and they had successfully made the transition to Austin. Simply, Ms. Selsky was not given a reasonable or realistic option to continue her employment with IMS.
- 5.7. Ms. Selsky made several offers to continue her employment with IMS and to continue working out of her Austin office.
- 5.8. IMS rejected Ms. Selsky's offers and continued to attempt to characterize Ms. Selsky's forced termination as a resignation.
- 5.9. IMS' actions constitute a constructive discharge. A constructive discharge occurs where an employer or its agent's conduct is so severe that a *reasonable* person in the employee's place would feel compelled to resign. Requiring Ms. Selsky to commute to Pennsylvania from Austin was unreasonable. As a result of this involuntary termination, Ms. Selsky is seeking her severance benefits under the IMS Health Incorporated Employee Protection Plan ("the Plan"). See below.

### **Plan Coverage**

The Plan covers all full-time salaried and regular part-time salaried employees of a Participating Company who are on a United States payroll at the time they incur an 'Eligible Termination' (as defined below) and such other employees as permitted by the Plan.

These employees are referred to in this summary as 'Eligible Employees.'

Ms. Selsky is an *Eligible Employee* as she was a full-time salaried employee of IMS, and she was on its United States payroll. In addition, Ms. Selsky's separation meets the definition of an *Eligible Termination* under the Plan.

### **Eligible Termination**

Severance benefits are only payable if an Eligible Employee incurs an 'Eligible Termination.' An Eligible Termination means:

- (a) An involuntary termination of an Eligible Employee's employment from a Participating Company for **any** reason other than for cause or unsatisfactory performance; or
- (b) A resignation by the Eligible Employee which is mutually agreed to in writing by the Participating Company and the employee and it is expressly agreed in writing that this plan will apply.

The Plan goes on to state:

An Eligible Termination does not include (1) a unilateral resignation (that is, one not agreed to in writing by the Participating Company), (2) any termination where an offer of employment is concurrently made to the Eligible Employee for a comparable position at a Participating Company.

- 5.10 Ms. Selsky's termination constitutes an *Eligible Termination* because she was involuntarily terminated from IMS for a reason other than for cause or unsatisfactory performance. This reason clearly entitles Ms. Selsky to her severance benefits as the Plan covers an *Eligible Employee* who incurs an *Eligible Termination*: Termination for "any" reason other than for cause or unsatisfactory

performance. Moreover, Defendant has never alleged that Ms. Selsky was terminated for cause or unsatisfactory performance under the Plan. See below.

‘Cause’ for this purpose means:

- (a) Willful malfeasance or willful misconduct by the Eligible Employee in connection with his or her employment;
- (b) Continuing failure to perform such duties as are requested by any employee to whom the Eligible Employee reports, directly or indirectly, or the Participating Company’s Board of Directors;
- (c) Failure by the Eligible Employee to observe material policies of the Participating Company; or
- (d) The commission by the Eligible Employee of (i) any felony or (ii) any misdemeanor involving moral turpitude.

5.11 Because Ms. Selsky was an *Eligible Employee* with an *Eligible Termination*, she is entitled to receive her severance benefits under the Plan, her 2006 bonus, and the cost of outplacement services. According to Ms. Selsky, her severance benefits under the Plan should be approximately \$103,824.00. See below.

39 Weeks of salary = \$80,686.00  
Full year of 2006 bonus at plan = \$16, 137.00  
Outplacement services (approximately) = \$7,000.00

5.12 Therefore, as a result of IMS’ ERISA violations, Ms. Selsky is seeking her severance benefits. Ms. Selsky is also seeking her attorney’s fees, costs, and interest.

6. FIRST CAUSE OF ACTION: SECTION 510 EMPLOYMENT RETIREMENT INCOME SECURITY ACT (“ERISA”)

6.1. Section 510 makes it illegal to discharge or discriminate against a plan participant for the purpose of interfering with the attainment of any right to which the participant may become entitled under the plan. Plaintiff alleges that Defendant’s actions as described in

Paragraphs 5.1-5.12 show that Defendant retaliated against Plaintiff to prevent her from recovering her benefits under its ERISA plan.

#### 7. ATTORNEY'S FEES

- 7.1. Defendant's action and conduct as described herein and the resulting damage and loss to Plaintiff has necessitated Plaintiff retaining the services of SHELLIST★LAZARZ, LLP, 3D/International Tower, 1900 West Loop South, Suite 1910, Houston, Texas 77027, in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorney's fees as provided by ERISA.

#### 8. PRAYER

- 8.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer, and that on final hearing of this cause Plaintiff has the following relief:

- 8.1.1. Judgment against Defendant, for actual damages sustained by Plaintiff as alleged herein;
- 8.1.2. Grant Plaintiff general and special damages for Defendant's violations of ERISA;
- 8.1.3. Pre-judgment interest at the highest legal rate;
- 8.1.4. Post-judgment interest at the highest legal rate until paid;
- 8.1.5. Attorneys' fees;
- 8.1.6. Expert witness fees;
- 8.1.7. All costs of court;
- 8.1.8. Such other and further relief, at law or in equity, general or special to which Plaintiff may show she is justly entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TMS', is written over a horizontal line.

TODD SLOBIN

TSB # 24002953

3D/International Tower

1900 West Loop South, Suite 1910

Houston, Texas 77027

(713) 621-2277 (Tel)

(713) 621-0993 (Fax)

ATTORNEY FOR PLAINTIFF

Of Counsel:

SHELLIST★LAZARZ, LLP.

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

**RECEIVED**  
**SUN 12 2007**  
 SHAWN SELSKY  
 CLERK, U.S. DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS

(b) County of Residence of First Listed Plaintiff TRAVIS  
 By DEPUTY CLERK  
 (EXCEPT IN PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Todd Slobin, Shellist Lazarz LLP, 1900 West Loop S., Ste. 1910,  
 Houston, TX 77027 Phone: 713-621-2277

## DEFENDANTS

IMS HEALTH INCORPORATED

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.

Attorneys (If Known)

Diana L. Hoover, Mayer, Brown, Rowe & Maw, LLP, 700 Louisiana,  
 Ste. 3400, Houston, TX 77002 Phone: 713-238-2628

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                            |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 1132 (a)(3)

Brief description of cause:

Denial of Benefits

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/12/2007

SIGNATURE OF ATTORNEY OF RECORD

T. Slobin

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO82  
(Rev. 4/90)

ORIGINAL

406607

RECEIPT FOR PAYMENT  
UNITED STATES DISTRICT COURT  
for the  
WESTERN DISTRICT OF TEXAS

at

Austin

RECEIVED FROM

Shellist Hazare  
1900 W. Loop So., Ste 1910  
Houston Tx 77027

Fund	
6855XX	Deposit Funds
604700	Registry Funds
	General and Special Funds
508800	Immigration Fees
085000	Attorney Admission Fees
086900	Filing Fees
322340	Sale of Publications
322350	Copy Fees
322360	Miscellaneous Fees
143500	Interest
322380	Recoveries of Court Costs
322386	Restitution to U.S. Government
121000	Conscience Fund
129900	Gifts
504100	Crime Victims Fund
613300	Unclaimed Monies
510000	Civil Filing Fee (1/2)
510100	Registry Fee

ACCOUNT	AMOUNT
086900	600.00
510000	190.00
086400	100.00
TOTAL	350.00
Case Number or Other Reference	
1:07-CV-463	

New Case

Selsky v. IMS  
Health Inc.

\$ Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE	Cash	Check	M.O.	Credit	DEPUTY CLERK
6-12-07		✓			[Signature]